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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re A.T. et al., Persons
Coming Under the Juvenile
Court Law.

B291973
(Los Angeles County
Super. Ct. No. 18CCJP03074)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

B.R.,

Defendant and Appellant.

APPEAL from jurisdictional and dispositional orders
of the Superior Court of Los Angeles County, Frank J. Menetrez,
Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Kim Nemoy, Principal
Deputy County Counsel, for Plaintiff and Respondent.

In this dependency case, B.R. (mother) appeals from the juvenile court's jurisdictional and dispositional orders. Mother's sole contention is that the juvenile court erred in removing her son A.T. from her custody. We conclude the removal order was supported by substantial evidence and affirm the juvenile court's jurisdictional and dispositional orders.

BACKGROUND

A.T. was born in June 2009. Beginning when A.T. was four-years old, unidentified persons filed complaints with the Department of Children and Family Services (DCFS). DCFS was unable to substantiate any of the complaints. A social worker who investigated the family three times believed that mother "was triggering the child [A.T.] to act out."

When A.T. was in kindergarten, his school expelled him. Mother reported that, at that time, A.T. suffered from auditory hallucinations. An assessment revealed that at age six, A.T. had attention difficulties. A.T. acted aggressively and with poor impulse control. Mother reported that A.T. would punch and kick her. A.T. tried to stab a classmate with a pencil.

Prior to the current dependency proceedings, a physician recommended inpatient hospitalization for A.T. Mother opposed the recommendation. A.T. used psychotropic medication and received mental health therapy.

1. *Petition*

In May 2018, DCFS filed a Welfare and Institutions Code¹ section 300 petition requesting that the juvenile court take jurisdiction over then eight-year-old A.T. and his three-year-old half-sibling B.U. Although the petition included allegations that mother physically abused A.T., the court sustained only the following allegations: Mother “emotionally abused the child [A.T.] by repeatedly telling the child that the child is bad and mean, blaming the child for the family’s involvement with DCFS, threatening to take the child to a mental hospital and leaving the child there, not allowing the child to participate in school and recreational activities, and telling the child’s therapeutic services providers and other unrelated adults that the mother doesn’t want the child, that the child is a liar, and that the child is a bad child.” Father failed to protect the child.²

Father is A.T.’s father, not B.U.’s father. B.U.’s father is referred to as stepfather. The juvenile court dismissed the portions of the petition concerning B.U., and she remains in the custody of mother and stepfather.

2. *Social Worker Reports*

DCFS reported that A.T.’s teacher worried that mother lacked parenting skills. A.T.’s teacher believed that A.T. was “hard to handle,” and mother may have been abusing him

¹ Undesignated statutory citations are to the Welfare and Institutions Code.

² Because the juvenile court did not sustain the allegations concerning physical abuse, we do not summarize the background facts relevant to those allegations.

emotionally. Another school employee reported that mother repeatedly told A.T. he was a “bad kid.”

A therapist reported that mother emotionally abused A.T. and had poor parenting skills. When mother would become angry, she would tell A.T. she no longer wanted him. The therapist reported that although mother enrolled in a 12-week parenting class, she did not make substantial progress. Although mother “attended consistently,” she failed to learn parenting skills and “struggle[d] with praise towards” A.T., focusing only on the negative aspects of his behavior. Mother did not know how to discipline A.T. and triggered A.T. to “act out.”

A.T. reported that mother threatened to place him in a mental hospital and leave him there permanently. A.T. told the social worker that “he is bad sometimes.” A.T. told a social worker that it was his fault “that this [dependency proceeding] is happening.” A.T. told the social worker that mother told him he had to stay inside because “he is mean.”

Mother reported that she was aware of A.T.’s aggressive tendencies and had enrolled him in services since he was three years old. Mother acknowledged that she would tell A.T. that “the police [officer] was going to take him and he would be placed in the hospital” when he yelled and screamed. Mother reported that A.T. had been diagnosed with attention deficit hyperactivity disorder (ADHD), and mother believed that he suffered from other disorders. A doctor prescribed medication to treat A.T.’s ADHD and anger outbursts.

Stepfather reported that A.T. was aggressive and would hit himself, throw items, and yell. A.T. had been in therapy for several years. Stepfather also reported that he and mother could not control A.T. and sometimes called the police.

An assessment of A.T. during the dependency proceedings revealed that he had a history of hyperactivity, suicide ideations, aggression towards adults, his sibling, and his peers. A.T. heard voices “telling him to kill his mother and place her in a plastic bag.” A.T. threatened his mother and step-father when they refused his requests.

During the course of the dependency proceedings, the juvenile court detained A.T. and removed him from mother’s care. A.T.’s caregiver reported that mother told A.T. that he will not be able to return home if he does not behave. After A.T. was removed from mother’s care, DCFS observed that A.T. wanted to return to mother’s care. A social worker observed that mother needed to “learn skills to avoid frustrations and understand [A.T.’s] developmental challenges.”

3. *Jurisdiction*

Following a hearing, the juvenile court assumed jurisdiction over A.T. Father was the only witness to testify at the hearing. Father testified that he lived with A.T. until 2012. From 2015 through 2018 he did not see A.T. Since the juvenile court permitted him visitation, father had missed only one visit because A.T. had a scheduling conflict.

At the jurisdictional hearing, A.T.’s counsel represented that A.T. wanted to return to mother’s custody.³ Counsel, however, argued that A.T. should be suitably placed because there was no evidence that showed mother had “made any substantive progress at this time.” Mother’s counsel argued that there was no substantial danger to A.T.’s well-being if he were

³ A.T. informed the juvenile court at the detention hearing that he preferred to remain with mother.

returned to mother's care. In support, counsel pointed out that mother completed a parenting class.

The court assumed jurisdiction over A.T. Over mother's objection the court removed A.T. from her custody. The court reasoned: "[B]ased on the evidence I have today, I don't think I have any reason to believe that her [mother's] conduct toward [A.T.] would be any better today were I to return him than it was when the case came in." The court expressed hope that "mother will work very hard on her programs right away" and A.T. would return to her care soon. The juvenile court facilitated the possibility of an early return by ordering a progress hearing in advance of the regularly scheduled statutory progress hearing.

DISCUSSION

On appeal, mother challenges the juvenile court's dispositional order, arguing that the juvenile court erred in removing A.T. from her custody. " 'We review an order removing a child from parental custody for substantial evidence in a light most favorable to the juvenile court findings.' " (*In re A.R.* (2015) 235 Cal.App.4th 1102, 1116.)

Section 361, subdivision (c)(1) permits the removal of a child from a custodial parent's home only if the juvenile court finds by clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's, guardian's, or Indian custodian's physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor

cannot be safely left in the physical custody of the parent, guardian, or Indian custodian with whom the minor resided at the time of injury.” (§ 361, subd. (c)(1).)

“ ‘A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ ” (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.) “Removal ‘is a last resort, to be considered only when the child would be in danger if allowed to reside with the parent.’ ” (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 146.)

Turning to this case, substantial evidence supported the juvenile court’s removal order. First, the juvenile court’s jurisdictional order was prima facie evidence that removal was necessary. (§ 361, subd. (c)(1).) Second, mother presented no evidence to contradict this prima facie evidence. Mother attended a parenting class, but there was no evidence that she learned parenting skills or that she would treat A.T. differently as a result of attending the class. Moreover, additional evidence showed that mother continued to abuse A.T. emotionally during the dependency proceedings, and A.T. told the social worker that the proceedings were his fault. Neutral reporters, including A.T.’s teachers and therapist, consistently reported that mother’s poor parenting skills triggered A.T. and that mother emotionally abused A.T.

Mother’s arguments challenging the dispositional order ignore the standard of review, which requires this court to view the evidence in the light most favorable to the juvenile court’s

order. (*In re A.R.*, *supra*, 235 Cal.App.4th at p. 1116.) Mother's emphasis on the fact that she did not intend to be abusive reflects a lack of awareness of the consequences of her statements to A.T. The critical issue was not her intent, but whether there was a substantial danger to A.T.'s emotional well-being. The evidence that mother continued to abuse A.T. emotionally during the detention period undermines her argument that additional services could have prevented the need for removal.

Although mother correctly points out that she enrolled A.T. in therapeutic services, her efforts to seek assistance do not undermine the juvenile court's finding that mother emotionally abused A.T. or that placing him in her care jeopardized his well-being. The fact that mother provided a safe home for B.U., who did not suffer from the same mental health concerns as A.T., does not show mother also could provide a safe home for A.T.

Jurisdiction is proper even "without a finding that a parent is at fault or blameworthy for her failure or inability to supervise or protect her child." (*In re R.T.* (2017) 3 Cal.5th 622, 624.) Here, the juvenile court recognized mother's commitment to A.T., and stated that it hoped mother "will work very hard on her programs right away" so that A.T. could promptly return her care. Notwithstanding mother's demonstrated commitment to A.T., substantial evidence supported the conclusion that there was a substantial danger to A.T.'s emotional well-being if he remained in mother's custody.

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

CHANEY, Acting P. J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.